

34-O-01

AN ORDINANCE

**Granting a Special Use for Two Type 2 Restaurants
Each With a Drive-through Facility at
1900 Dempster Street**

WHEREAS, the Zoning Board of Appeals ("ZBA") held a public hearing on March 6, 2001 pursuant to proper notice in case no. ZBA 01-08-SU(R) on the application of James M. Sutphen of Joseph Freed and Associates, L.L.C., agent for Evanston Plaza, L.L.C., property owner, for a special use pursuant to Section 6-10-2-3 of the Zoning Ordinance to allow two Type 2 restaurants each with a drive-through facility on a certain portion of the premises at 1900 Dempster Street in a C1 Commercial District; and

WHEREAS, development of the 1900 Dempster Street premises, the Dempster and Dodge Shopping Center, is subject to the Redevelopment Agreement with Evanston Plaza L.L.C., approved by the City in Ordinance 132-O-99; and

WHEREAS, the ZBA, after hearing testimony and receiving other evidence, made written findings pursuant to Section 6-3-5-10 of the Zoning Ordinance that the application met the standards for special uses, and recommended that the City Council grant the application; and

WHEREAS, the Planning and Development Committee of the City Council considered and adopted the ZBA's findings and recommendations at its March 26, 2001 meeting and recommended City Council approval thereof; and

WHEREAS, the City Council at its meetings of March 26, 2001, April 10, 2001, April 16, 2001, and April 23, 2001 considered the findings and recommendations of the ZBA and the recommendation of the Planning and Development Committee, and approved the special use with modifications.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Council hereby adopts the record, findings, and recommendation of the ZBA and the record and recommendations of Planning and Development Committee in the aforescribed case no. ZBA 01-08-SU(R) and grants said special use on property commonly known as 1900 Dempster Street, Evanston, Illinois and legally described in Exhibit A attached hereto and made a part hereof.

SECTION 2: That pursuant to Section 6-3-5-12 of the Zoning Ordinance, which provides that the City Council may impose conditions on the grant of special uses, these conditions are hereby imposed:

- a. Construction and operation of the special use granted hereby shall be in substantial compliance with ~~the testimony presented by~~ representations of the Applicant to the ZBA, the Planning and Development Committee, and the City Council, documents placed on file by the Applicant, and approved plans, all in connection with this case.
- b. 1) Prior to the opening for business of each Type 2 restaurant, the Applicant shall cause the operator of each Type 2 restaurant to submit to the Zoning Division and maintenance of compliance with a Litter Collection Plan, requiring the policing of an area located within a 250-foot radius of the building in which the use is located. This area shall be policed once every three hours during the hours the use is in operation and shall be kept free of all litter, including, but not limited

to, food, beverages, napkins, straws, containers, bags, utensils, plates, cups, bottles, cans, and all other litter of any type emanating from any source. The operator of each Type 2 restaurant shall comply with the Litter Collection Plan. This Ordinance shall prevail over any inconsistent or contrary provisions in the plan. ~~"Litter" shall have the meaning in Section 8-4-6-1 of the Evanston City Code of 1979, as amended, as it may be further amended.~~

2) For the purpose of this Ordinance, "litter" shall include, but is not limited to: putrescible animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food; other putrescible waste, including animal waste, dead animals, yard clippings and leaves; nonputrescible solid waste, including rubbish, ashes, street cleanings, abandoned automobiles, solid business, commercial, and industrial wastes, paper, wrappings, cigarettes, cardboard, tin cans, glass, bedding, crockery and similar materials; and all other waste materials which, if thrown or deposited as herein prohibited, may create a danger to public health, safety, or welfare.

c. (1) Each Type 2 Restaurant shall have dumpsters in a number adequate in the City's judgment and collections therefrom a minimum of three (3) times a week. Dumpsters shall be sufficient in number and capacity to contain, with the lids tightly shut, all litter emanating from operation of the use, collected pursuant to the above-described litter collection plan, and accumulating between collections.

(2) Litter collection receptacles shall be placed on the sidewalks around the building containing the Type 2 restaurants. Said receptacles shall be emptied a minimum of once a day and the contents removed to a lawful location.

(3) Within seven (7) days of written notice from the City to do so, the number of dumpsters, litter receptacles, and/or the number of collections from each shall be increased or modified in accordance with the City's directive. All dumpsters and litter receptacles shall be maintained in a clean condition with tight-fitting lids.

d. (1) Type 2 Restaurants shall not be operated beyond the hours of six a.m. (6:00 a.m.) and twelve midnight (12:00 a.m.), seven (7) days a week.

- (2) Drive-through pick-up windows shall not be operated beyond the hours of six a.m. (6:00 a.m.) and twelve midnight (12 a.m.), seven (7) days a week. No drive-through pick-up window shall be operated except during the hours of operation of its respective Type 2 Restaurant.
- e. All reasonable steps shall be taken to prevent loitering within the Type 2 restaurants and on the premises set forth in the Site Plan.
- f. A minimum of seventy-five percent (75%) of the floor area of each Type 2 Restaurant to which customers are permitted access shall have no fewer than ten (10) dining tables or shall have buffet or counter service, all of which 1) utilize reusable dishware and 2) have waitstaff and/or table bussing service.
- g. Exterior menu boards are prohibited.
- h. Signage for the Type 2 Restaurants shall require prior review and approval by the Site Plan and Appearance Review Committee ("SPAARC").
- i. Final Site Plan and Appearance Review Committee approval is a prerequisite to City issuance of building permits, except for demolition permits.
- j. 1) The Applicant shall submit a landscape plan to SPAARC and receive final approval thereof from that body and from the Superintendent of Parks/Recreation and Forestry.
- 2) Said approved landscape plan shall set forth the location, quantities, sizes, and types of landscaping materials on the subject property and on the adjacent right-of-way. The approved plan shall, at a minimum, a) provide for maintenance and care of plantings, and b) for replacement of dead or dying plantings at the earliest time permitted by the applicable planting season. The landscape maintenance plan shall be recorded with the Cook County Recorder's Office and evidence of said recordation provided to the Zoning Division as a condition precedent to issuance of a final certificate of occupancy.

- k. The Applicant shall, within forty-five (45) days of written notice to do so, make installations deemed appropriate by the Director of Public Works to limit vehicular traffic across established parking spaces.

- l. When necessary to effectuate the above conditions, the Applicant, and his heirs, successors, and assigns shall assure that all persons operating the Type 2 restaurants provided for by this Ordinance comply with the terms of this Ordinance applicable to operation of such Type 2 restaurants.

- m. The Evanston Plaza Redevelopment Agreement approved by the City in Ordinance 132-O-99 is incorporated into this Ordinance and made a part hereof.

- en. (1) Violation of this Ordinance or of other applicable legislation, may, in the City's sole discretion, void this zoning grant.

(2) In the event a violation is attributable to one Type 2 restaurant but not both Type 2 restaurants, in so far as is reasonable under the circumstances, any action taken by the City pursuant to Section 2 (c) (1) of this Ordinance will be limited to the Type 2 restaurant in violation.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: March 26, 2001

Adopted: April 23, 2001

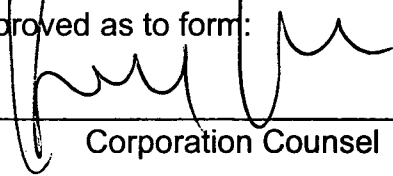
Approved: April 24, 2001

Lorraine H. Morlen
Mayor

ATTEST:



City Clerk

Approved as to form:


Corporation Counsel

**EXHIBIT A
(5 PAGES)**

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN BANBURY THIRD CONSOLIDATION, RECORDED MARCH 27, 1987 AS DOCUMENT 87162463 BEING A CONSOLIDATION OF PART OF LOT 1 IN BANBURY SECOND CONSOLIDATION AND PART OF LOT "A" IN CALHOUN NORTON CONSOLIDATION, BOTH IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM THE FOLLOWING:

THAT PART OF LOT 1 IN BANBURY CONSOLIDATION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN RECORDED MARCH 19, 1986 AS DOCUMENT NUMBER 86107329 AND FILED MARCH 19, 1986 AS DOCUMENT NUMBER 3502281 DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY SOUTHERLY CORNER OF SAID LOT 1; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 19.88 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 105 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 2 FEET TO THE POINT OF BEGINNING; THENCE WESTERLY, AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 307.33 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 38 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 114 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE LOT 1, A DISTANCE OF 195 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 193.33 FEET; THENCE SOUTHERLY PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 233 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPTING THEREFROM:

PART OF LOT 1 IN BANBURY CONSOLIDATION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED MARCH 19, 1986 AS DOCUMENT NUMBER 86107329 AND FILED MARCH 19, 1986 AS DOCUMENT NUMBER 3502281, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY SOUTHERLY CORNER OF SAID LOT 1; THENCE NORTHERLY ALONG THE EAST LINE OF LOT 1, A DISTANCE OF 19.88

FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 15 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WESTERLY, AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 90 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 235 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 75 FEET; THENCE NORTHERLY PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 5 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 15 FEET; THENCE SOUTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 240 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPTING THEREFROM:

THAT PART OF BANBURY THIRD CONSOLIDATION PLAT RECORDED AS DOCUMENT NUMBER 87162463, LEGALLY DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 8, 9, 10, 11 AND 12 IN BLOCK 2 IN GROVER AND PITNER'S ADDITION TO EVANSTON, A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 12 AT ITS INTERSECTION WITH A LINE DRAWN 45.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE CENTER LINE BETWEEN THE TWO MAIN TRACKS (THE NORTHWESTERLY OF TWO MAIN TRACKS HAVING BEEN REMOVED) OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, AS SAID CENTER LINE WAS ORIGINALLY LOCATED AND ESTABLISHED; THENCE NORTHEASTERLY PARALLEL WITH SAID ORIGINAL CENTER LINE A DISTANCE OF 241.64 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE; A DISTANCE OF 5.00 FEET; THENCE SOUTHWESTERLY ALONG A LINE DRAWN 40.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE AFORESAID ORIGINAL CENTER LINE, A DISTANCE OF 239.38 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF LOT 12, AFORESAID; THENCE WEST, ALONG SAID SOUTH LINE A DISTANCE OF 5.49 FEET TO THE HEREINBEFORE DESCRIBED POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

PARCEL 2:.

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS REQUIRED FOR THE PURPOSE OF MAINTENANCE OF COMMON UTILITY FACILITIES AND OTHER UTILITIES SERVING THE PARCEL AND FOR THE INSTALLATION, OPERATION, MAINTENANCE, REPAIR, RELOCATION AND REMOVAL OF COMMON UTILITY FACILITIES, IF ANY, IN A MANNER WHICH DOES NOT INTERFERE WITH

ANY BUILDING USE OR OPERATION, IN AND OVER THAT OF:

PARTS OF LOT 1 IN BANBURY CONSOLIDATION IN THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED MARCH 19, 1986 AS DOCUMENT 86107329 AND FILED MARCH 19, 1986 AS DOCUMENT NUMBER 3502281 DESCRIBED AS FOLLOWS:

(A) COMMENCING AT THE MOST EASTERLY SOUTHERLY CORNER OF SAID LOT 1: THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 19.88 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF LOT 1 A DISTANCE OF 105 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1 A DISTANCE OF 2 FEET TO THE POINT OF BEGINNING; THENCE WESTERLY, AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 307.33 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 38 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 114 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 195 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 193.33 FEET; THENCE SOUTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 233 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) COMMENCING AT THE MOST EASTERLY SOUTHERLY CORNER OF SAID LOT 1; THENCE NORTHERLY ALONG THE EAST LINE OF LOT 1, A DISTANCE OF 19.88 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 15 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WESTERLY, AT RIGHT ANGLES TO THE EAST LINE OF LOT 1, A DISTANCE OF 90 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 235 FEET, THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 75 FEET; THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 5 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 15 FEET; THENCE SOUTHERLY, PARALLEL WITH THE EAST LINE OF LOT 1, A DISTANCE OF 240 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PURSUANT TO RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY LASALLE NATIONAL BANK, TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 17, 1985 AND KNOWN AS TRUST NUMBER 109877 AND TOYS R' US, INC., A CORPORATION OF DELAWARE, DATED JUNE 9, 1986 AND RECORDED JUNE 27, 1986 AS DOCUMENT NUMBER 86264888, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON EXCLUSIVE PERPETUAL UTILITY EASEMENT FOR THE BENEFIT OF PART OF PARCEL 1 ON, OVER, UNDER, THROUGH AND ACROSS:

THE WESTERLY 15 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE THEREOF, OF THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF LOT 1, IN BANBURY CONSOLIDATION IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 19, 1986 AS DOCUMENT 86107329, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHWESTERLY CORNER OF SAID LOT 1, THENCE NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 32.93 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS EAST ALONG SAID SOUTH LINE A DISTANCE OF 71.36 FEET TO A CORNER OF LOT 1, BEING ALSO THE SOUTHWEST CORNER OF LOT "A" IN CALHOUN NORTON CONSOLIDATION IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 24, RECORDED MARCH 3, 1965 AS DOCUMENT 19396701; THENCE NORTH 21 DEGREES, 51 MINUTES, 29 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1, BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 326.30 FEET TO A CORNER OF LOT 1; THENCE NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1, BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 16.47 FEET TO A CORNER OF LOT 1, THENCE NORTH 21 DEGREES, 51 MINUTES, 29 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1; BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 34.53 FEET; THENCE SOUTH 87 DEGREES, 29 MINUTES 24 SECONDS, WEST 87.83 FEET, THENCE SOUTH 21 DEGREES, 51 MINUTES, 29 SECONDS, WEST 360.84 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AS CONTAINED IN EASEMENT AGREEMENT MADE BY NORTH WEST NATIONAL BANK OF CHICAGO, TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 14, 1979 AND KNOWN AS TRUST NUMBER 5502, NORTHERN TRUST BANK OF PALM BEACH, FLORIDA N.A., NAN P. NORTON DELATUSCH (FORMERLY KNOWN AS NAN P. NORTON) AND MICHAEL C. NORTON AS TRUSTEES UNDER THAT CERTAIN CALHOUN-NORTON MARITAL TRUST CREATED BY A TRUST AGREEMENT DATED DECEMBER 6, 1979 (COLLECTIVELY THE NORTON TRUSTEES), ARENS CONTROLS, INC., CORPORATION OF ILLINOIS, LASALLE NATIONAL BANK, TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 9, 1986 AND KNOWN AS TRUST NUMBER 111203, (THE LASALLE TRUST) AND BANBURY/EVANSTON LIMITED PARTNERSHIP, AN

ILLINOIS LIMITED PARTNERSHIP, DATED OCTOBER 1, 1986 RECORDED
NOVEMBER 16, 1986 AS DOCUMENT 86522197, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: SOUTHWEST CORNER OF DODGE AVENUE AND DEMPSTER
STREET, EVANSTON, ILLINOIS

TAX IDENTIFICATION NUMBERS: 10-24-108-032
10-24-108-033
10-24-108-034